

HOUSE BILL No. 1407

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-17.

Synopsis: Merger of public benefit corporation. Allows a public benefit corporation to merge with a state educational institution.

Effective: July 1, 2015.

Mayfield, Klinker

January 14, 2015, read first time and referred to Committee on Commerce, Small Business and Economic Development.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1407

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-17-2-26.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: **Sec. 26.5. "State educational**
4 **institution" has the meaning set forth in IC 21-7-13-32.**
5 SECTION 2. IC 23-17-19-2 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Without the prior
7 approval of the circuit court or superior court of the county where the
8 corporation's principal office (or, if the principal office is not located
9 in Indiana, the corporation's registered office) is located, in a
10 proceeding ~~that in which~~ the attorney general has been given written
11 notice, **the following may merge:**
12 (1) A public benefit **corporation** or a religious corporation may
13 only merge with the following:
14 (†) (A) A public benefit or religious corporation.
15 (‡) (B) A foreign corporation that would qualify under this



article as a public benefit or religious corporation.

~~(3)~~ **(C)** A wholly-owned foreign or domestic business or mutual benefit corporation if the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

~~(4)~~ **(D)** A business or mutual benefit corporation if the following conditions are met:

~~(A)~~ **(i)** On or before the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if the corporation were to be operated as a business concern are transferred or conveyed to a person who would have received the corporation's assets under IC 23-17-22-6(a)(5) and IC 23-17-22-6(a)(6) had the corporation dissolved.

~~(B)~~ **(ii)** The business or mutual benefit corporation returns, transfers, or conveys any assets held by the business or mutual benefit corporation upon condition requiring return, transfer, or conveyance, that occurs by reason of the merger, in accordance with the condition.

~~(C)~~ **(iii)** The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become ~~(i)~~ members in, ~~(ii)~~ shareholders in, or ~~(iii)~~ officers, employees, agents, or consultants of the surviving corporation.

~~(D)~~ **(iv)** The requirements of section 8 of this chapter are met.

(2) A state educational institution may merge with a public benefit corporation.

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation under subsection ~~(a)(4)~~, **(a)(1)(D)**, notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(c) Without the prior written consent of the attorney general or of the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is located;

in a proceeding in which the attorney general has been given notice, a member of a public benefit or religious corporation may not receive or keep anything as a result of a merger other than a membership or



1 membership in the surviving public benefit or religious corporation.
 2 The court shall approve the transaction if the transaction is in the
 3 public interest.

4 SECTION 3. IC 23-17-19-3 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Unless this
 6 article, articles of incorporation, bylaws, or the board of directors,
 7 **board of trustees**, or members acting under subsection (c) require a
 8 greater vote or voting by class, a plan of merger to be adopted must be
 9 approved as follows:

10 (1) By the board of directors **or the board of trustees**.

11 (2) By the members, if any, by a majority of the votes cast.

12 (3) In writing by a person whose approval is required by articles
 13 of incorporation authorized under IC 23-17-17-1 for an
 14 amendment to articles of incorporation or bylaws.

15 (b) If a corporation does not have members, a merger must be
 16 approved by a majority of the directors **or trustees** in office at the time
 17 the merger is approved. In addition, the corporation shall provide
 18 notice of any directors meeting at which the approval is to be obtained
 19 under IC 23-17-15-3. The notice must also state that the purpose of the
 20 meeting is to consider the proposed merger.

21 (c) Unless articles of incorporation provide otherwise, a proposed
 22 merger and plan of merger must be initiated by a board of directors **or**
 23 **board of trustees**. The board of directors **or board of trustees** may
 24 condition the submission of the proposed merger on receipt of a higher
 25 percentage of affirmative votes of the members or on another basis.

26 (d) If a board of directors seeks to have the plan approved by the
 27 members at a membership meeting, the corporation shall give notice to
 28 the corporation's members of the proposed membership meeting under
 29 IC 23-17-10-5. The notice must also state that the purpose of the
 30 meeting is to consider the plan of merger and contain or be
 31 accompanied by a copy or summary of the plan. The copy or summary
 32 of the plan for members of the surviving corporation must include a
 33 provision that, if contained in a proposed amendment to articles of
 34 incorporation or bylaws, would entitle members to vote on the
 35 provision. The copy or summary of the plan for members of the
 36 disappearing corporation must include a copy or summary of the
 37 articles of incorporation and bylaws that will be in effect immediately
 38 after the merger takes effect.

39 (e) If a board of directors seeks to have a plan approved by the
 40 members by written consent or written ballot, the material soliciting the
 41 approval must contain or be accompanied by a copy or summary of the
 42 plan. The copy or summary of the plan for members of the surviving



1 corporation must include a provision that, if contained in a proposed
 2 amendment to the articles of incorporation or bylaws, would entitle
 3 members to vote on the provision. The copy or summary of the plan for
 4 members of the disappearing corporation must include a copy or
 5 summary of the articles and bylaws that will be in effect immediately
 6 after the merger takes effect.

7 (f) Voting by a class of members is required on a plan of merger if
 8 the plan contains a provision that, if contained in a proposed
 9 amendment to articles of incorporation or bylaws, would entitle the
 10 class of members to vote as a separate voting group on the proposed
 11 amendment under IC 23-17-17-6 or IC 23-17-18-2. The plan is
 12 approved by a class of members by a majority of the votes cast by the
 13 class.

14 (g) After a merger is adopted and before articles of merger are filed,
 15 the planned merger may be abandoned subject to any contractual rights
 16 without further action by members or other persons who approved the
 17 plan:

- 18 (1) under the procedure set forth in the plan of merger; or
- 19 (2) if a procedure is not set forth, in the manner determined by the
- 20 board of directors.

21 SECTION 4. IC 23-17-19-4 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) After a plan of
 23 merger is approved by the board of directors **or board of trustees** and
 24 if required by section 3 of this chapter by the members and any other
 25 persons, the surviving or acquiring corporation **or state educational**
 26 **institution** shall deliver to the secretary of state articles of merger
 27 setting forth the following:

- 28 (1) The plan of merger.
- 29 (2) If approval of members was not required, a statement to that
- 30 effect and a statement that the plan was approved by a sufficient
- 31 vote of the board of directors.
- 32 (3) If approval by members was required, the following:
- 33 (A) The designation, number of memberships outstanding,
- 34 number of votes entitled to be cast by each class entitled to
- 35 vote separately on the plan, and number of votes of each class
- 36 indisputably voting on the plan.
- 37 (B) Either the total number of votes cast for and against the
- 38 plan by each class entitled to vote separately on the plan or the
- 39 total number of undisputed votes cast for the plan by each
- 40 class and a statement that the number cast for the plan by each
- 41 class was sufficient for approval by that class.
- 42 (4) If approval of the plan by a person other than the members or



the board of directors **or board of trustees** is required under section 3(a)(3) of this chapter, a statement that the approval was obtained.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving corporation **or state educational institution** resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which a merging corporation has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of incorporation of the surviving corporation that change the surviving corporation's corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving corporation has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

SECTION 5. IC 23-17-19-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) When a merger takes effect the following occur:

(1) Another corporation party to the merger merges into the surviving corporation **or state educational institution** and the separate existence of every corporation except the surviving corporation ceases.

(2) The title to real property and other property owned by each corporation party to the merger is vested in the surviving corporation **or state educational institution** without reversion or impairment subject to any conditions to which the property was subject before the merger.

(3) The surviving corporation **or state educational institution** has all liabilities and obligations of each corporation party to the merger.

(4) A proceeding pending against a corporation party to the merger may be continued as if the merger did not occur or the surviving corporation **or state educational institution** may be substituted in the proceeding for the corporation whose existence ceased.

(5) The articles of incorporation and bylaws of the surviving corporation **or state educational institution** are amended to the extent provided in the plan of merger.



1 (b) After a merger takes effect as provided in this article, any terms
2 of the plan of merger that are not included in the articles of
3 incorporation shall be considered to be contract rights only and not part
4 of the governing document of the corporation.

5 SECTION 6. IC 23-17-19-7 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. A bequest, devise,
7 gift, grant, or promise contained in a will or other instrument of
8 donation, subscription, or conveyance that:

9 (1) is made to a constituent corporation; and
10 (2) takes effect or remains payable after the merger;
11 inures to the surviving corporation **or state educational institution**
12 unless a will or other instrument otherwise specifically provides.

